



WP(MD)No.10278 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD)No.10278 of 2022
and W.M.P.(MD)No.7318 of 2022

K.Kalaivani

... Petitioner

/vs./

1.The Government of Tamil Nadu,
Rep. by Principal Secretary,
Health and Family Welfare Department,
Fort St. George,
Chennai – 600 009.

2.The Director of Medical and Rural
Health Services,
D.M.S.Complex,
No.361, Anna Salai,
Chennai – 600 006.

3.The Dean,
Government Rajaji Hospital,
Madurai – 625 020.

4.The Administrative Officer,
Government Rajaji Hospital,
Madurai – 625 020.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 4th respondent in Moo.Mu.No.004957/Ni2/4/2020, dated 03.12.2020 and the impugned order passed by the 3rd respondent in Mu.Moo.No.004957/Ni2/4/2020, dated 19.12.2020, quash the same and direct the respondents to sanction maternity leave to the petitioner for 9 months commencing from 19.02.2020 to 14.11.2020 and repay the monetary benefits recovered from the petitioner.

For Petitioner : Mr.M.Saravanan

For Respondents : Mr.R.Ragavendran,
Government Advocate.

ORDER

The petitioner herein is working as a Staff Nurse in the Government Rajaji Hospital, Madurai and she delivered a male child on 20.02.2020. The respondents had sanctioned maternity leave for 9 months from 19.02.2020 to 14.11.2020 and she was paid salary for the above period. However, through the order dated 03.12.2020, the leave was regularised in the following manner:



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1. Earn Leave between 19.02.2020 and 04.03.2020 – 15

days; and

2. Leave on loss of pay on the basis of medical certificate

between 05.03.2020 to 14.11.2020 – 255 days.

2. In consequence to the aforesaid order dated 03.12.2020, the respondents are contemplated an enquiry and through the subsequent proceedings dated 19.12.2020, the respondents ordered recovery. As against the same, the petitioner has filed this Writ Petition.

3. The issue as to whether the privileges available to an employee under the Maternity Benefit Act, 1961 for a pregnancy and delivery of a third child can be denied, had come up for consideration before this Court in the case of ***K.Umadevi vs. The Government of Tamil Nadu, Represented by its Chief Secretary to Government, Chennai***, in ***WP.No. 22075 of 2021*** and by order dated **25.03.2022**, this Court had held that denial of maternity leave to the employee for the birth of third child cannot be countenanced in law. The relevant portion of the order reads as



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“32. The above provision which deal with the grant of maternity benefit does not impose per se, two child norm. It only differentiates the period of maternity benefit available to women employee with two surviving children and women having two or more than two surviving children. Despite several amendments, introduced in the year 2017 in the Act, as far as Section 5 is concerned, a restriction has been brought about by inserting a proviso under sub-clause (3) as to the entitlement of the period of maternity leave. A woman employee having less than two surviving children is entitled to the maximum period of benefit i.e. twenty six weeks and for a woman employee having two or more than two surviving children, the benefit is restricted to twelve weeks. However, no ceiling on the number of children has been imposed towards entitlement of the maternity leave per se. Even assuming on an hypothetical consideration that the relevant GOs aforementioned herein have a statutory force, to be read as integral part of FR 101(a) and thus enforceable, the restriction of two child norm stipulated in the rule has to be declared as repugnant to the Central legislation (M.B. Act, 1961) and therefore, the same to be held, void, in terms of Article 254 of the Constitution.”



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4. Thus, when Section 5 of the Maternity Benefit Act, 1961, does not restrict the benefits to the first two children alone, denial of such benefits to the third child cannot be sustained, in the light of aforesaid decision in the case of *K.Umadevi (supra)*.

5. Accordingly, the impugned order dated 03.12.2020, on the file of the fourth respondent is quashed. Consequently, there shall be a direction to the fourth respondent herein to pass appropriate orders, sanctioning maternity leave to the petitioner for 9 months commencing from 19.02.2020 to 14.11.2020, together with full pay and other attendant benefits, within a period of four (4) weeks from the date of receipt of a copy of this order.

6. In the light of the above findings rendered by this Court, regularizing the petitioner's maternity leave under the grounds of Earn Leave and loss of pay, cannot be sustained and consequently, the recovery order also requires to be set aside. Accordingly, the impugned order passed by the third respondent dated 19.12.2020 is set aside.



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WEB COPY 7. This Writ Petition stands allowed accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Internet : Yes / No



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M.S.RAMESH, J.

vsm

**Order made in
W.P.(MD)No.10278 of 2022**

Dated:
30.08.2022